

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

Phimpa Thepvongsa,

Case No. C10-1045 RSL

Plaintiff Pro Se,

V.

15 Regional Trustee Services, Old
16 Republic Title LTD., Ocwen Loan
17 Servicing, LLC, Saxon Mortgage
18 Services, Mortgage Electronic
19 Registration Systems, Inc., Deutsche
Bank National Trust Company, Morgan
Stanley ABS Capital I Inc., and Doe
Defendants 1 through 20.

**STIPULATED ORDER TO STAY
CASE PENDING RESOLUTION OF
THE MERS ISSUES PRESENTED
IN *BAIN V. ONEWEST BANK,
F.S.B.* AND *SELKOWITZ V. FIRST
AMERICAN TITLE INSURANCE
COMPANY* BY THE
WASHINGTON SUPREME COURT**

Defendants.

Stipulated Order to Stay Case

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1 2. All deadlines in the Court's Minute Order of June 8, 2011, including but not
2 limited to the discovery and dispositive motion deadlines, shall be vacated.
3 Discovery shall remain open until after determination of the MERS issues,
4 and upon further court order.

5 Dated: December 22, 2011

6 **MUELLER & ASSOCIATES,**
7 **INC. P.S.**

8 /s/ Edward L. Mueller
9 Edward L. Mueller
10 Attorneys for Plaintiff,
11 PHIMPHA THEPVONGSA

12 Dated: December 22, 2011

13 **HOUSER & ALLISON**
14 A Professional Corporation

15 /s/ Robert W. Norman, Jr.
16 Robert W. Norman, Jr.
17 Attorneys for Defendants,
18 OCWEN LOAN SERVICING, LLC,
19 SAXON MORTGAGE SERVICES,
20 INC., MORTGAGE ELECTRONIC
21 REGISTRATION SYSTEMS, INC.,
22 and DEUTSCHE BANK
23 NATIONAL TRUST COMPANY,
24 AS TRUSTEE FOR MORGAN
25 STANLEY ABS CAPITAL I INC
26 TRUST 2007-NC4

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28 Joint Stipulation to Stay Case

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1 **TO THE CLERK AND ALL INTERESTED PARTIES:**

2 Plaintiff, Phimpha Thepvongsa (“Plaintiff”), Defendants, Ocwen Loan
 3 Servicing, LLC (“Ocwen”), Saxon Mortgage Services, Inc. (“Saxon”), Mortgage
 4 Electronic Registration Systems, Inc. (“MERS”), Deutsche Bank National Trust
 5 Company, as Trustee for Morgan Stanley ABS Capital I Inc Trust 2007-NC4
 6 (“Deutsche Bank as Trustee”), and Regional Trustee Services Corporation file the
 7 following Joint Stipulation, and in support thereof, state the following.

8 Plaintiff filed a Second Amended Complaint alleging violations of the
 9 Washington Deed of Trust Act against MERS, Deutsche Bank as Trustee, and
 10 Regional Trustee Services Corporation. *See SAC, ¶¶ 3.1-3.3.* Plaintiff alleges
 11 that MERS had no interest in “Plaintiff’s signed original Note so as to enable
 12 MERS to sell, transfer, and assign the note to anyone...[,]” and that MERS is not
 13 a lawful beneficiary under his Deed of Trust. *See SAC, ¶¶ 3.2.2, 2.4.6.-2.4.7.*

14 In the cases of *Bain v. OneWest Bank, F.S.B.*, 2011 WL 917385 (W.D.
 15 Wash. Mar. 15, 2011) (“*Bain*”) and *Selkowitz et al v. First American Title*
 16 *Insurance Company et al*, Case No. 3:10-cv-05523-JCC, Judge Coughenour
 17 stayed the cases and certified the following questions to the Washington Supreme
 18 Court:

19 1. Is Mortgage Electronic Registration Systems, Inc., a lawful
 20 “beneficiary” within the terms of Washington’s Deed of Trust
 21 Act, Revised Code of Washington section 61.24.005(2), if it
 never held the promissory note secured by the deed of trust?

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23
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1 2. If so, what is the legal effect of Mortgage Electronic
2 Registration Systems, Inc., acting as an unlawful beneficiary
2 under the terms of Washington's Deed of Trust Act?

3 4. Does a homeowner possess a cause of action under
4 Washington's Consumer Protection Act against Mortgage
5 Electronic Registration Systems, Inc., if MERS acts as an
5 unlawful beneficiary under the terms of Washington's Deed of
6 Trust Act?

7 This Court stayed determination of a Motion for Summary Judgment
8 pending resolution of the above MERS issues by the Washington Supreme Court.
9
10 See *Pavino v. Bank of America, N.A.*, 2011 WL 281788 (W.D.Wash. Jul. 18,
11 2011) (Judge Lasnik).

12 Plaintiff and Ocwen, Saxon, MERS, and Deutsche Bank as Trustee agree
13 that issues that will be decided in the *Bain* and *Selkowitz* cases will have an impact
14 on this case, including the likelihood of prevailing on a Motion for Summary
15 Judgment, and decisions regarding settlement of the case. The parties also agree
16 that, once the MERS issues in *Bain* and *Selkowitz* are resolved, the parties will be
17 more certain about areas of discovery that will be pertinent for a Motion for
18 Summary Judgment and/or trial. The parties have not completed their desired
19 discovery, and seek more time do so.

20 Accordingly, the parties stipulate and agree that:

21 1. This case shall be stayed pending the determination by the Washington
22 Supreme Court of the MERS issues presented by this Court in *Bain* and
23 *Selkowitz*.

24 Joint Stipulation to Stay Case

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1 Dated: December 22, 2011

ROBINSON TAIT

2 /s/ Nicolas A. Daluiso

3 Nicolas A. Daluiso
4 Attorneys for Defendant,
5 Regional Trustee Services
Corporation

6 **IT IS SO ORDERED.**

7 Dated: _____

8 _____
9 Judge Robert S. Lasnik
10 United States District Court for the
11 Western District of Washington

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